IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4892 of 2004 (O&M)

Date of Decision: 31.10.2006

Ram Charan ...Petitioner

Vs.

Ravi Bala Jain ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Ashish Aggarwal, Advocate,
for the petitioner.

Ms.Ravi Bala Jain, respondent in person.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order dated 8.9.2004 passed by the learned Additional District Judge, Panipat, vide which appeal filed by the petitioner has been dismissed under Order 9 Rule 2 of the Code of Civil Procedure (for short the Code). The order passed by the learned Additional District Judge reads as under:-

> " Process against respondent could not be issued due to non-compliance of previous orders. Rather, an application for substituted service of respondent has been moved by the

appellant. A perusal of the case file shows that despite last three opportunities, the appellant failed to comply with the orders passed by the court and vide which he was directed to file correct address and registered cover for service of respondent. Even on the last date, he was given a period of three days to comply with the orders. But instead of complying with those orders, he has moved an application for substituted service. Thus, it shows that he is intentionally avoiding complying with the orders of the court and is delaying proceedings of the case. So, the application filed by him cannot be entertained and as such no further opportunity is possible to comply with the previous orders. So, the appeal filed against the impugned orders dated 4.1.2004 by the learned Trial Court is hereby ordered to be dismissed under Order 9 Rule 2 C.P.C.

Trial Court record be sent back and where the parties are directed to appear on 28.9.2004 for carrying out further proceedings. File be consigned."

Appeal was filed on 29.1.2002. In the said appeal notice was issued for 4.4.2003. The Court passed the following orders on different dates:-

"Present: Sh.A.K.Garg counsel for appellant.

Registered A.D. on behalf of respondent received back undelivered. Now case to come up on 18.4.2003 for summoning of respondent on filing of PF.R.C. etc.

Appellant is granted last opportunity to file the same.

Sd/-
Dr.N.Shangla
ADJ, Panipat 4.2.03

Present: Sh.A.K.Garg counsel for appellant.

Correct address be given within one week. Notice be given in ordinary process as well as through Registered cover. Dasti summon be given Mr. Garg has stated that the respondent Ravi Bala has to appear in the court of Shri B.Diwakar, ACJM, Panipat on 20.5.03. Hence he has sought permission to serve her on 20.5.03 in the court premises. Heard. Allowed. Case to come up on 20.5.03 for which date notice be issued to respondent.

Sd/-
Dr.N.Shangla
ADJ, Panipat 18.4.03

"Present: Sh.N.R.Munjal and A.K.Garg, advocates for appellant.

Mr.Munjal and Garg have requested that respondent Ravi Bala be served in the court premises as well as at her residential address through dasti summons as she is stated to be avoiding the service. She be summoned for 22.8.2003. Summons be given dasti,if necessary. Lower Court record be also requisitioned.

Sd/-
Dr.N.Shangla

ADJ, Panipat 20.5.03

"Present: Sh.Anand Garg counsel for appellant.

Summons sent to respondent which was given dasti to the appellant has been received back unserved. The registered cover has also been received back undelivered. As submitted by the counsel for the appellant it has come to his notice that respondent has since changed her address. He is directed to confirm the address of the respondent and then file P.F. and registered cover for issuance of notice to her. For notice to respondent case is adjourned to 14.10.2003.

Sd/-
Sneh Prashar
ADJ, Panipat 22.8.2003

"Present: None.

File taken up today as I shall be on casual leave on 14.10.2003. This case stands adjourned to 1.12.2003 for the same proceedings as already fixed. All concerned be informed accordingly.

Sd/-
Sneh Prashar
ASJ/ADJ/MACT,
Panipat 13.10.2003.

"Present: Sh.N.R.Munjal counsel for appellant.

P.F. was filed late,due to which notice to respondent could not be issued. Registered cover should also be filed and then notice to respondent be issued for 6.1.2004. Trial

Court record be summoned for that date.

Sd/-
Sneh Prashar
ADJ, Panipat 1.12.03

"Present: Sh.N.R.Munjal counsel for appellant.

Notice sent to respondent has not been received back served or otherwise. Let fresh be issued on filing of R.C. For 3.2.2004.

Sd/-
Sneh Prashar
ADJ, Panipat 6.1.2004

"Present: Sh.N.R.Munjal counsel for appellant.

Notice sent to respondent has been received back with the report that it cannot be served without name of the society. In other words that address submitted by appellant is incomplete. Let fresh and complete address along with P.F. and R.C. be filed by the appellant and then notice to respondent be issued for 5.3.2004.

Sd/-
Sneh Prashar
ADJ, Panipat 3.2.04

"Present: Sh.N.R.Munjal counsel for appellant.

Registered notice sent to respondent has again been received back unserved with the report that address was incomplete. Learned counsel for the appellant submits that he had mentioned the address on the registered cover which has been given by the respondent in the execution

proceedings. Any how he request for dasti summon. Since one time P.F. Has already been filed. Summons be issued and given dasti for 6.4.3004. In case appellant is able to trace name of the society, then registered cover be also given.

Sd/-
Sneh Prashar
ASJ, Panipat 5.3.04

"Present: Ram Charan appellant in person with Shri N.R.Munjal, Advocate.

Summons sent to the respondent has not been received back served or otherwise. The earlier registered covers issued to the respondent had been returned with the report that the address is incomplete. The appellant was directed to file complete address along with R.C. but that had not been filed by him. On request of learned counsel for the appellant,one more opportunity is given for filing fresh and complete address of respondent as well as registered cover and then notice to her be issued for 11.5.2004.

Sd/-
Sneh Prashar
ASJ, Panipat 6.4.2004

"Present: Counsel for the appellant.

Paste Summons taken by the appellant has not been returned. It is submitted by the counsel that the respondent could not be served as he had not been able to locate the name of the society. He undertakes to get him served this

time by mentioning the name of the Society. In view of the matter, one more but last opportunity is give on furnishing fresh and complete address of the respondent along with registered cover and the notice to him be issued for 4.6.2004. Dasti summon be give as desired.

Sd/-
ADJ, Panipat 11.5.2004

"Present: Counsel for the appellant.

Previous order has not been complied with. Let the same be complied within three days and respondent be summoned for 5.8.2004.

Sd/-
ADJ, Panipat 4.6.2004

"Present: Counsel for the appellant.

Previous order has not been complied with despite giving two last opportunities and one more is requested for compliance. Let the compliance be made within three days and failing which legal consequences shall follow and the case file be put up on 8.9.2004.

Sd/-
ADJ, Panipat 5.8.2004"

The reading of the above orders shows that there was no occasion for the Court to have exercised the jurisdiction under Order 9 Rule 2 of the Code as it was not a case of failure on the part of the petitioner to deposit the process fee or give the registered cover as on account of repeated attempts the petitioner failed to serve the respondent herein he

made an application for substituted service. Instead of passing the order on the said application learned Additional District Judge considered this to be a default on the part of the petitioner and dismissed the suit under Order 9 Rule 2 of the Code.

Learned counsel for the petitioner, therefore, contends that the impugned order is the outcome of misreading of the provisions as well as the proceedings of the Court. On number of occasions the petitioner had filed process fee as well as deposited the registered covers but service could not be effected as the respondent was evading service.

However, the respondent in person argued that the present revision is not competent as remedy is provided to the petitioner under Order 9 Rule 4 of the Code. In support of this contention she placed reliance on the judgment of this Court in **Om Prakash Jain Vs. Lakhpat Rai and others 1990 Civil Court Cases 508.**

I have heard the learned counsel for the petitioner and the respondent in person and find no force in the contention raised by the respondent.

The reading of Order 9 Rule 4 of the Code shows that it is only when the default referred to in Order 9 Rule 2 of the Code is committed that the application under Order 9 Rule 4 of the Code can be made to satisfy the court by giving reasons for the default. However, in case where there is an error in passing order under Order 9 Rule 2 of the Code it is not open to the petitioner to satisfy the court to give reasons for non-compliance as is provided under Order 9 Rule 4 of the Code. Therefore, the provisions of Order 9 Rule 4 of the Code are not applicable to the present

case.

Accordingly, the impugned order is set aside and the revision petition is allowed . The appeal is restored to its original number.

The parties are directed to appear before the learned Additional District Judge, Panipat on 14.12.2006.

(Vinod K.Sharma)
Judge

31.10.2006
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